Supreme Court of the United States

OCTOBER TERM, 1968

No. 297

IMMIGRATION AND NATURALIZATION SERVICE,
Petitioner,

—v.—

VELJKO STANISIC

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

DOCKET ENTRIES
(including administrative proceedings)

1965	
January 7:	Filed alien's petition for injunctive relief (Civil No. 65-10)
January 7:	Entered District Director's initial order denying alien's application for parole
January 11:	Filed alien's amended and supplemental petition for injunctive relief
January 13:	Filed I.N.S.'s motion for summary judgment
January 18:	Filed district court's order staying proceedings and referring matter back to immigration authorities to hold hearing
January 25:	Entered District Director's order denying alien's application for parole (following hearing)
January 27:	Filed alien's second amended and supplemental complaint
January 27:	Filed alien's motion for review of District Director's order of January 25 denying parole
April 27:	Filed I.N.S.'s answer to alien's second amended and supplemental complaint
April 27:	Filed I.N.S.'s motion for summary judgment
July 9:	Filed opinion of district court (East, D.J.) granting I.N.S.'s motion for summary judgment and dismissing complaint
July 20:	Filed order of district court (East, D.J.) granting I.N.S.'s motion for summary judgment and dismissing complaint
1966	
June 21:	Entered District Director's order directing alien to appear for deportation from the United States on June 24 (following alien's failure to obtain relief by private bill)
June 22:	Submitted alien's renewed petition to District Director for parole

DOCKET ENTRIES
(including administrative proceedings)

1966	
June 23:	Entered District Director's order denying alien's renewed petition for parole
June 23:	Filed alien's complaint seeking review of District Director's June 23 order denying parole (Civil No. 66-333)
June 23:	Filed alien's motion to restrain District Director from deporting him
June 23:	Filed district court's order to District Director to show cause why restraining order should not issue
June 23:	Filed I.N.S.'s answer to alien's complaint
June 24:	Filed findings and judgment of district court (Kilkenny, D.J.) denying alien's motion to restrain District Director from deporting him
June 24:	Filed alien's notice of appeal to court of appeals
July 29:	Filed alien's motion for order directing District Director to surrender to clerk of district court for inclusion in record on appeal entire administrative file which was submitted to Judge East for inspection
July 29:	Filed order of district court granting alien's July 29 motion
1968	
February 9:	Filed alien's motion in court of appeals for order requiring I.N.S. to ascertain from Yugoslav Government what charges, if any, will be made against him if he is returned to Yugoslavia and maximum punishment that will be inflicted, and to request guaranties that he will not be subjected to persecution
April 17:	Filed order of court of appeals denying alien's February 9 motion
April 17:	Filed opinion and judgment of court of appeals

[Filed January 7, 1965]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-10

VELKYO [*sic*] STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED A. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

PETITION FOR INJUNCTIVE RELIEF

Comes now petitioner and alleges:

I.

Petitioner is an alien and a citizen of Yugoslavia and until recently a crewman aboard the SS SUMADIJA, a Yugoslavia flag vessel presently docked at Coos Bay, Oregon.

II.

Respondent ALFRED A. URBANO is the District Director of the United States Immigration and Naturalization Service with his office at Portland, Oregon.

III.

That on January 4, 1965, petitioner left the aforesaid vessel and entered the United States.

IV.

That petitioner seeks political asylum in the United States of America and desires in the alternative not to be sent or returned to Yugoslavia or any other communist dominated country for the reason that he and his family have been persecuted by the Communists in Yugoslavia

because they are anti-communist and petitioner should he return to Yugoslavia or a Communist country would be in danger of being persecuted, physically abused or killed.

V.

That petitioner has applied for the aforesaid relief with the Immigration and Naturalization Service and has retained Gerald H. Robinson as his attorney.

VI.

That the respondents have refused to permit petitioner to consult with his attorney before taking statements, have refused to afford petitioner an opportunity to be heard on his claim to stay within the United States and have advised petitioner's attorney that they intend to remove petitioner from Portland to the aforesaid vessel forthwith and prevent him from asserting his claim to remain in the United States.

VII.

That if petitioner is returned to said vessel he will be subject to the control and discipline of the captain and will be in immediately danger of life and limb.

WHEREFORE, your petitioner prays for an order of this Court:

1. Restraining respondents from removing petitioner from the City of Portland or otherwise deporting or excluding him from the United States without an opportunity to be heard on his claim to remain in this country; and

2. To confer with counsel; and

3. For such other and further relief as may be appropriate in the premises.

/s/ Gerald H. Robinson
GERALD H. ROBINSON
Attorney for Petitioner

FILE: A15 620 991

IN RE: VELJKO STANISIC

APPLICATION: Parole because of fear of physical persecution; 8 CFR 253.1(e)

DISCUSSION: The Applicant last entered the United States as a crewman on the M/V SUMADIJA at Coos Bay, Oregon, on December 21, 1964. He was admitted as a crewman with a conditional landing permit under the provisions of Section 101(a)(15)(D). The Applicant left his vessel in Coos Bay, Oregon, and communicated with a relative in Eugene, Oregon. He was transported to that city by this relative on or about January 5, 1965. He was then brought to the Portland, Oregon office on January 6, 1965, where he was informally interviewed. He stated that he would not return to his vessel under any conditions and that he feared persecution if returned to his ship. No substantial evidence was given at this time as to any acts or reasons for persecution. Since he expressly indicated that he would not return to his vessel, his conditional landing permit was revoked in conformity with Section 252(b) of the Immigration and Nationality Act.

On January 7, 1965, an attempt was made to give the Applicant an opportunity to state his views under oath and present evidence under 8 CFR 253.1(e) concerning his allegations that he would be persecuted. He was represented by Gerald H. Robinson as counsel. Applicant refused to make any statement under oath at this time upon advice of counsel.

The provisions of Section 252(b) of the Immigration and Nationality Act provide that the conditional landing permit of a crewman who has left his vessel and does not intend to depart with the vessel may be revoked, the crewman taken into custody and the Master or commanding officer of the vessel on which he arrived be required to receive and detain him on board such vessel, and be deported from the United States.

Inasmuch as the Applicant was afforded an opportunity to furnish this Service with information and any evidence he may have to substantiate his application under

8 CFR 253.1(e), and has refused to do so, I find no evidence in this matter that would substantiate his allegations of persecution. His application for parole will be denied, and he will be returned to his vessel pursuant to the provisions of Section 252(b) of the Immigration and Nationality Act.

ORDER: It is Ordered that the application be denied.

/s/ Alfred J. Urbano
ALFRED J. URBANO
District Director
U. S. Immigration
& Naturalization Service
Portland, Oregon

DATE: January 7, 1965.

[Filed January 11, 1965]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-10

VELJKO STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

AMENDED AND SUPPLEMENTAL PETITION
FOR INJUNCTIVE RELIEF

Comes now the petitioner and alleges:

I.

Petitioner is an alien and a citizen of Yugoslavia and until recently, a crewman aboard the SS Sumadija, a

Yugoslavia flag vessel presently docked at Coos Bay, Oregon.

II.

Respondent, Alfred J. Urbano, is the District Director of the United States Immigration and Naturalization Service with his office at Portland, Oregon.

III.

That on January 4, 1965, petitioner left the aforesaid vessel and entered the United States.

IV.

That petitioner seeks political asylum in the United States of America and desires in the alternative not to be sent or returned to Yugoslavia or any other communist dominated country for the reason that he and his family have been persecuted by the Communists in Yugoslavia because they are anti-communist and petitioner should he return to Yugoslavia or a Communist country would be in danger of being persecuted, physically abused or killed.

V.

That petitioner has applied for the aforesaid relief with the Immigration and Naturalization Service and has retained Gerald H. Robinson as his attorney.

VI.

That the respondents have refused to permit petitioner to consult with his attorney before taking statements, have refused to afford petitioner an opportunity to be heard on his claim to stay within the United States and have advised petitioner's attorney that they intend to remove petitioner from Portland to the aforesaid vessel forthwith and prevent him from asserting his claim to remain in the United States.

VII.

That since the filing of the original petition herein, the respondents have filed a purported order, a copy of which is attached hereto and marked Exhibit "A", denying petitioner's application for relief as above stated; that said order was on its face entered without a hearing, without an opportunity for petitioner to have effective use of counsel who was summoned to the purported interrogation referred to in the order on 15 minutes notice and without an opportunity to consult with his client prior thereto; that the foregoing conduct of the respondents is in violation of the petitioner's right to due process of the law under the Constitution of the United States and is in violation of the statutes of the United States appertaining, especially, Title 8 USCA Sec. 1362 and Title 8 USCA Sec. 1252.

VIII.

That the respondent, Alfred J. Urbano, is not capable of making a fair or impartial decision as to petitioner's claims and has evidenced his bias against petitioner by his summary denial of petitioner's claims at the time petitioner made his application as set forth herein and, prior to any knowledge on the part of the said Alfred Urbano, of the facts which are the basis of petitioner's claims.

IX.

That if petitioner is returned to said vessel or to Yugoslavia or to any other Communist dominated country, he will be subject to the control and discipline of the captain and will be in immediate danger of life and limb.

WHEREFORE, your petitioner prays for an Order of this Court:

1. Restraining respondents from removing petitioner from the City of Portland or otherwise deporting or excluding him from the United States without an opportunity for a hearing under Title 8 USCA Sec. 1252 upon his claim to remain in this Country; and to confer with counsel; and

2. For such other and further relief as may be appropriate in the premises.

/s/ Gerald H. Robinson
GERALD H. ROBINSON
810 Standard Plaza
Portland, Oregon
Attorney for Petitioner

[Exhibit "A" is the order of the District Director which appears at pp. 5-6, *supra.*]

[Certificate of Service omitted in printing]

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14 January 1965
Reporter J. M.
Deputy D. E. R.

..... Solomon, CJ. × East, J. ..... Kilkenny, J.

Civil No. 65-10

VELJKO STANISIC

vs.

U. S. IMMIGRATION & NATURALIZATION SERVICE, ET AL.

Pltfs. Attys. Gerald H. Robinson
Defts. Attys. Don Sullivan

* * * * *

Record of hrg. on respondents Motion for Summary Judgment.

Order staying proceedings and referring matter back to the immigration authorities to hold a hearing to determine whether the Petitioner should be paroled to the U. S. A.

Order staying any deportation order if issued.

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Portland, Oregon

FILE: A15 620 991

IN RE: VELJKO STANISIC

APPLICATION: Parole because of fear of physical persecution; 8 CFR 253.1(e)

DISCUSSION: After inquiry conducted January 7, 1965 pursuant to Section 253.1(e), Title 8, Code of Federal Regulations, an order was entered denying the above application for parole. The applicant then petitioned for injunctive relief in the United States District Court, Portland, Oregon. The Court, considering the petition, instructed that the matter be returned to this Service for further inquiry under the above regulation to permit the applicant to present evidence in support of his claim that he would be subjected to physical persecution if he should be returned to Yugoslavia. On January 18, 1965 the order of January 7, 1965 was withdrawn and it was ordered that the inquiry be reopened in accordance with the directive of the Court. The inquiry was reopened January 19, 1965.

The applicant is a 29 year-old native and citizen of Yugoslavia. He has never married. He is employed as a radio operator on the M/V Sumadija, a Yugoslav vessel. He last entered the United States on that vessel December 23, 1964 at Coos Bay, Oregon, and was given permission to visit ashore. On January 4, 1965 he and another crewman, Veselin Vucinic, left the vessel and on January 6th presented themselves at the Immigration Office in Portland. They stated they wished to remain in the United States as they would be subjected to persecution if they should be returned to their vessel or to Yugoslavia. Their landing permits were revoked under Section 252(b) of the Immigration and Nationality Act.

The applicant's parents are natives and citizens of Yugoslavia. His father died in Yugoslavia June 23, 1964. His mother lives in Titograd, Yugoslavia. He has five brothers and three sisters. They are also natives, citizens, and residents of Yugoslavia. He has a cousin in the United States.

The applicant stated he is of the Orthodox religion. He attended elementary school in Pelev Brijeg for four years from 1945 to 1948; junior high school from 1948 to 1950; and high school from 1950 to 1955 in Kotor. He also attended an architect school for seven months in Zagreb. From 1955 to 1956 the applicant worked for about a year in a post-office in Kotor and as a teller in a bank for about six months in Rijeka in 1957. From March, 1958 to March, 1959 he attended the Yugoslav Officers' Reserve School for six months and was a Lieutenant in the Army for six months in the field. After leaving the Army he attended the Merchant Marine Telegraph School for one year, finishing in 1960. He thereafter served as an assistant radio operator and radio operator on about six different Yugoslav merchant vessels, beginning in 1961 to the present time.

The applicant testified he has been opposed to Communism ever since about six years of age. He stated he left the M/V Sumadija because of the Communist faction aboard, to which he is opposed. He stated the Communists on the ship gave him a rough time and accused him of being sympathetic to non-Communist countries. He admitted they could not do too much to him because he held the essential position of radio operator, but that he would be ridiculed on arrival at his home port because of his sympathies with the western powers.

The applicant stated that if returned to his ship now he would be persecuted. This persecution would consist of verbal abuse and ridicule, not only because of his anti-Communist feelings, but also because he deserted the ship. He stated that the verbal persecution

would be so severe that he could not stand it and would jump into the sea.

The applicant stated he has never been physically mistreated on his ship. He stated the captain, who is also anti-Communist, "used to read me off." Even though the captain is also anti-Communist, the applicant did not get along well with him. He stated the captain is under the domination of the Communists on the ship and is forced to adhere to their principles. He stated he ate the same food as the other crewmen, and that he was paid the same wage as the other crew-members, commensurate with his position as radio officer.

The applicant stated that if he should be returned to Yugoslavia now he would be tried as an escapee from his ship, and that he does not know if he would be killed or sent to prison for life. He stated he could not stand the humility and remarks which would be directed at him, and that he would have no alternative but to kill himself. Upon further questioning he stated he would be tried as a deserter and also because he is anti-Communist. He stated he has not been tried before for his anti-Communist feelings, although he has been back to Yugoslavia a number of times in his calling as a seaman, the last time being in July, 1964. At that time he was only accused by Communists in his town as being pro-Western.

The applicant stated that if he goes back to Yugoslavia he would have no life there, and that he would be killed or put in jail. He stated that if he got out of jail he would be unable to get a job. He stated that in Yugoslavia a crewman who deserts his ship is persecuted, whether he is Communist or anti-Communist. He stated that the Communists think he is a spy for the American government because he is the radio officer on the ship. He stated that in considering his case the authorities would take into account the fact that he is anti-Communist, that he jumped ship, that he believes in God, and that he is a spy for the United States government.

According to the applicant's testimony the only time he was arrested by authorities in Yugoslavia was in 1957, when he and a friend tried to escape to Trieste. They were picked up by fishermen and turned over to the police, who released them after two days. According to the applicant he was told then that if he ever tried it again he would be sentenced to life imprisonment.

The applicant's late father reportedly worked for about 30 years as a city clerk in Pelev Brijeg. He also assisted a priest in a church. He was against the Communists, and before Tito took over in Yugoslavia he got along alright with the authorities. When Tito took over in 1945 the applicant's father lost both of his jobs. Because he was anti-Communist he was not given the pension to which he was entitled. He assisted the Chetniks by furnishing them food and livestock for a few months, and then went home to farm his small piece of land and take care of his family. The applicant stated his father's life was twice threatened by the Communists after the war, he was beaten and his home was ransacked. On one occasion he was only spared by the intervention of an old friend who worked for the government.

The applicant stated that more than 30 of his uncles and cousins were killed by the Communists after the war, the last being in about 1950. He is somewhat vague in his knowledge of when they were killed, and as to the part his father played in helping the Chetniks, apparently basing his testimony on what his father told him before his death.

The applicant testified his brother, Branko, has been a teacher and school superintendent since at least 1948, and is now superintendent of a seaman's school for merchant marines in Kotor. His brother, Blazo, is a farmer. A brother, Vasilija, is a lieutenant in the Yugoslavia army, where he has served for five years. A brother, Bosko, works as an assistant mechanic on a ship. A brother, Nikola, attends a technical school in Titograd. His brother-in-law has worked as a police officer for five or six years.

Although the applicant testified he is on good terms with the members of his family and visits with them on his trips to Yugoslavia, he is not sure whether they are Communists or anti-Communists, or whether they are persecuted. He stated Branko and Vasilija are possibly Communists, else they could not hold jobs of trust. Although the applicant has much knowledge of the political beliefs of many Yugoslavians, he is not certain about the members of his own family.

The applicant stated he does not belong to any organizations, although dues are withheld from his wages for the Syndicata Pomoraca, a seaman's union. He stated he had no difficulty obtaining his last job on a ship, the M/V Sumadija. He took the job voluntarily. It has never been any problem obtaining work on the ships. He holds a seaman's book, issued to him by the authorities in Yugoslavia, and bearing a number of endorsements by such authorities showing his signing on and off of Yugoslavian vessels. He stated he is not required to present his travel documents to gain entry to his country. It is only necessary in order to change from ship to ship. According to his testimony his right to leave or return to Yugoslavia as a crewman has never been questioned. Some times, if his vessel was to be in port only a day or two, or if he had work to do on the ship, he was not permitted to go ashore. Otherwise he was given permission by the captain to leave the ship.

The applicant stated that 80 per cent of the Orthodox churches in Yugoslavia have been closed by the authorities, but that most of the Catholic churches are open. When his father died he wrote to the ship company and advised that he wished to return home to visit his father's grave. His ship returned to Yugoslavia shortly thereafter, in July, 1964, and the applicant was discharged. He remained in Yugoslavia 25 days and visited his father's grave during this time. While there he stayed with his mother, his brother, and cousins, and was not bothered by the officials. The applicant stated he assists his brothers in supporting his mother.

He sends her money every month from his earnings as a crewman. This money is sent through the shipping company, and has always been received by his mother.

The applicant stated he and his friend, Vucinic, recently assisted another crewman from their ship to desert in Vancouver, Canada, by lending him money. Although he was not physically abused by ship's personnel for this action, he states he was closely questioned by the Communist leader on the ship, and was told he would be given a hearing about the matter on return to Yugoslavia.

Two witnesses testified on behalf of the applicant. The first witness asked that his testimony not be divulged outside the hearing to any unauthorized persons because of fear of reprisals on his family in Yugoslavia. He testified he is a 69 year-old native of Yugoslavia naturalized in the United States in 1939. He first came to the United States in 1914, was in Yugoslavia from 1920 to 1923, again from 1929 to 1930, and last from 1958 to October 24, 1963. He reportedly went to Yugoslavia in 1958 to see about an apartment house which the government had taken from his parents in 1945. While there he dealt in the buying and selling of automobiles, was convicted of dealing in the black market, and was sentenced to serve 14 months. The original sentence was two and one-half years, but was reduced to 14 months by the Supreme Court. He was released after serving only 10 months.

The witness testified that after he arrived in Yugoslavia he was called before the secret police and questioned about remarks he had made in favor of the United States. He was admonished that he had better be careful or he might get into trouble. He stated he knew of the Stanisic and Vucinic families in Yugoslavia, they having been well thought of during the old regime. He stated he heard the Communists had taken over the land of the Vucinic's, and he knows both families were generally thought to be anti-Communist. He stated he had heard that the Communists killed many people, and that he knows the Communists are against

people of the Orthodox faith and that the churches are empty. He stated there are more Catholic churches there than Orthodox because the Pope has more power, and between Communist and Catholic it makes no difference.

According to the witness his principal knowledge of the atrocities perpetrated by the Communists was gained while he was in prison. He explained that he was convicted on some black market charge, resulting from business he did buying cars in Germany and selling them in Yugoslavia. He stated three different companies asked him to buy cars, which he arranged to do and had them sent from Germany to Yugoslavia. He paid the tax on the three cars, and realized a profit of $5,000. He stated Tito then forbade such activity saying it was dealing in the black market. His residence was searched and $10,000 was found stored in suitcases. This money was taken by the government and the witness was fined an additional $5,000, which he did not pay. He received the sentence mentioned before.

The witness does not say that he was physically mistreated while in jail, but that the political prisoners there were tortured, beaten, and killed. He personally saw only one prisoner beaten, but the stories about the other atrocities were given to him by other persons allegedly imprisoned for political reasons. The witness stated all the prisoners, both political and criminal, were housed together, and the only way he could tell a political from a criminal prisoner was by what the prisoner told him. He admitted that a prisoner might have told him he was in for political reasons, yet might have actually been a criminal.

The witness stated that if the applicant is sent to Yugoslavia he will be badly punished, and it would be better for him to die first. He stated he will suffer broken arms and ribs and other tortures. He knows this, he states, because they do this to everyone. He assumes from this that a deserting crewman will be imprisoned as a matter of course, and will be beaten. He knows of no seaman to whom this has happened.

The witness married in 1922 and his wife and two married daughters live in Yugoslavia. They have never come to the United States. His wife never wanted to come here, as she preferred to stay in Yugoslavia to take care of their parents. The witness asked her to come in 1929 but she refused. Her parents died before the war but she still did not come to the United States, and after the war the Communists would not let her come. In fact, she never tried. The witness stated his wife is getting along all right, and the Communists are not bothering her.

One of the witness' daughters has a husband who is against Communism, and he hasn't worked for a year and a half. The witness assists them by sending money, which the Communists permit to pass to him. The husband of the other daughter is a retired colonel. He draws a pension, and according to the witness is a Communist. The witness testified his own father died of cancer in 1957. He was in a government hospital for some time, having priority because he had been in the war. The witness thinks he was well taken care of.

Rade Dzankic was presented as a witness. He is a 35 year-old native and citizen of Yugoslavia, and comes from the same vicinity where the applicant lived. He was paroled into the United States September 27, 1963 as a refugee.

The witness testified he lived in Yugoslavia until 1949. He belonged to a youth movement known as the "R.O. Youths", which was opposed to the Communists. He tried to escape and was captured in Albania, where he was imprisoned from 1949 to 1956. He escaped from Albania, returned to Yugoslavia, was caught and imprisoned for three years. He stated that while in jail in Yugoslavia he suffered many tortures, such as being beaten, placed in solitary confinement, and being starved. He said the other political prisoners were treated the same way.

The witness testified the Stanisic and Vucinic families are known to be anti-Communist and were for the Chet-

niks in the old government. The Chetniks were persecuted and many were killed by the Communists after the war. He stated his brother was killed on April 24, 1944, and when his mother visited the brother two of her teeth were knocked out. After being released from prison in 1959 the witness served two years in the army. He was released and escaped to Italy, where he lived until coming to the United States in 1963.

It is the opinion of this witness that if the applicant is returned to Yugoslavia he will be tortured and will suffer punishment much more severe than that which would be inflicted on a Communist in the same circumstances. He stated the Orthodox churches have all been destroyed in Yugoslavia, and that there are only a few monasteries, used for tourist purposes.

This witness' father and mother, two brothers and a sister, live in Yugoslavia. He stated his parents live very poorly on their small farm. He testified quite openly about his experiences and family in Yugoslavia, without apparent fear that his family might suffer as a result of his testimony.

The witness bases his opinion of the fate which awaits the applicant in Yugoslavia on what a Yugoslav deserting crewman told him in Italy in 1963 as to what he knows about treatment accorded deserters. He has no other knowledge of punishment given deserters from ships, and knows of no crewman who has been punished in Yugoslavia.

Generally speaking, physical persecution, the likelihood of which would authorize postponement of deportation, means confinement, torture, or death inflicted on account of race, religion or political viewpoint. It does not encompass imprisonment for jumping ship.[1] The applicant has made no claim of persecution because of his race. The only claim he has made relating to his religion is that most of the churches of his faith have been closed in Yugoslavia, and he feels he is not free to attend church at will.

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[1] *Blazina* v. *Bouchard*, 286 F.2d 507 (C.A. 3, 2/2/61).

The applicant does not claim that he has actively engaged in any political activity. In essence, his claim is that he has been opposed to Communism since a youth, and his anti-Communist beliefs are known among his fellow crewmembers and among his acquaintances and fellow townspeople in Yugoslavia. According to the record, even though the applicant's opposition to Communism is known, he has been able to avoid joining the Communist Party, without apparent detriment to his career as a crewman. He admittedly has not so much as joined the Communistic seaman's union, although dues are taken from his wages. The fact that he has not been punished for these beliefs and failure to join the Party, and the fact that he has been able to hold his position of radio officer on Yugoslavian ships almost without interruption since early in 1961 do not support his position that he would be persecuted on return to Yugoslavia.

It has been judicially determined that economic proscription so severe as to deprive a person of all means of earning a livelihood may amount to physical persecution.[2] However, the applicant does not base his claim to physical persecution on utilitarian sanctions. By his own testimony he has been regularly employed in an important position on Yugoslavian vessels regularly since 1961, and has been earning enough money to send assistance to his mother each month. If he has difficulty thereafter in obtaining work on ships it will be as a result of his having deserted his vessel, and not because of his political beliefs. This aspect of the case, then, speaks for itself and requires no further comment.

It has further been ruled that imprisonment for illegally deserting a vessel is a criminal sanction reconcilable with generally accepted concepts of justice, and does not constitute physical persecution.[3] The court

[2] *Dunat* v. *Hurney*, 297 F.2d 744 (C.A. 3, 1/24/62).

[3] *Diminich* v. *Esperdy*, 299 F.2d 244 (C.A. 2, 12/29/61); cert. den. 4/9/62—82 S. Ct. 875.

later modified this ruling, however, to the extent of holding that an alien threatened with long years of imprisonment, perhaps even a life sentence, for attempting to escape a Communist dictatorship would be entitled to asylum on the ground of physical persecution.[4] And still subsequently it decided that possible incarceration for one or two years resulting from illegally deserting a ship is not physical persecution.[5]

The applicant contends he will now be in greater disfavor with the Communists in Yugoslavia because he jumped ship. Actually he has not presented any evidence that he has in the past been in their disfavor. The worst he suffered before was detention for two days when he was stopped from fleeing from Yugoslavia. For that he was only questioned and released with an admonishment. As stated before he comes and goes at will as a seaman. For four years he has held the sensitive position of radio officer on Yugoslavian ships. He was educated by the government there through high school, and then in the merchant marine school. He has presented nothing to show that his mother and brothers and sisters now living in Yugoslavia have been in the past or are now being physically persecuted. The threats of bodily harm and attempts at physical violence which respondent says were directed against his father, uncles and cousins occurred for the most part during and shortly after the war, and not since 1950.

Probably the applicant will be questioned by Yugoslav authorities if he is returned to his homeland. Possibly he will be confined during such examination. But such questioning and confinement will be in connection with his desertion from a Yugoslavian vessel contrary to the marine statutes of that nation, and not because of his opposition to Communism. Desertion of his ship by a Yugoslav crewman is, theoretically, a disciplinary of-

[4] *Sovich* v. *Esperdy*, 31 L.W. 2585, 13 Ad. L. 2d 619 (C.A. 2, 5/15/63).

[5] *Zupicich* v. *Esperdy*, C.A. 2, 6/28/63.

fense punished pursuant to Article 48 of the "Decree Concerning the Crews of the Merchant Marine of September 17, 1949." The penalties for such desertion thereunder are reprimand, fine, and loss of earned wages, but ordinarily not jail.[6] Contrary to the applicant's expectations, I see little likelihood that he will suffer the dire punishment he recounts. There are no circumstances in this record which indicate otherwise.

Apparently the applicant and the witness, Rade Dzankich, while testifying had in mind primarily the harsh conditions which existed in their homeland immediately following World War II. Counsel asks that we take judicial notice of physical persecution as it existed, or now exists, in Yugoslavia. As noted hereafter we take official notice of the conditions in that country. We take official notice of the fact that these conditions probably did exist during the War and possibly for several years thereafter to a lesser degree. At the same time, however, we must also take official notice that political restrictive measures against individuals have relaxed considerably in Yugoslavia in recent years.[7]

We also take official notice that on March 13, 1962 the Yugoslavian government granted amnesty to most of its political opponents, including members of units that fought against Marshal Tito's Partisans during World War II. A government bill embodying the terms of the amnesty was approved unanimously by parliament without debate. It was estimated the measure would affect about 150,000 persons outside Yugoslavia and would free nearly 100 prisoners.

This record contains nothing to distinguish the applicant from the numerous cases of Yugoslav nationals who have attempted strenuously to remain in this country rather than return to Yugoslavia. It has been held that only where the likelihood of physical persecution presently exists in a particular situation is with-

[6] Matter of *Banjeglav*, Int. Dec. No. 1298.

[7] Matter of *Vardjan*, Int. Dec. No. 1347.

holding of deportation warranted.[7] As in the cited case we do not find such likelihood here.

Even though it is established and we recognize that there has been persecution in Yugoslavia in the past, this record is replete with evidence, much of it supplied by the applicant and his witnesses, that in many instances the authorities in Yugoslavia in recent years have been considerate and understanding in their dealings with their nationals, whether their beliefs be for or against the Communists. From the testimony of one witness this fair treatment was even accorded a United States citizen who was found to have violated the laws of that nation.

It has been judicially held that where there is no evidence that the claimant was persecuted when he lived in Yugoslavia the denial of relief was proper.[8] The facts of this record, applied in the light of the foregoing precedents, do not establish that the applicant has shown that he would be physically persecuted if he were to return to Yugoslavia. The applicant's belief that he would be imprisoned for many years, physically mistreated, or killed on return to Yugoslavia, is mere conjecture on his part. He was not persecuted during all the years that he lived in Yugoslavia or served aboard its ships. His mother and eight brothers and sisters live in Yugoslavia and no showing has been made that they have been subjected to physical persecution either. Again these matters speak for themselves.

ORDER: It is ordered that the application be denied.

/s/ Alfred J. Urbano
ALFRED J. URBANO
District Director

Date: January 25, 1965

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[7] Matter of *Vardjan*, Int. Dec. No. 1347.

[8] *Guzabat* v. *Esperdy* (S.D., N.Y., 61 Civ. 4429, 4/16/62).

[Filed January 27, 1965]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-10

VELJKO STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

Comes now the petitioner and alleges:

I.

Petitioner is an alien and a citizen of Yugoslavia and until recently, a crewman aboard the SS Sumadija, a Yugoslavia flag vessel presently docked at Coos Bay, Oregon.

II.

Respondent, Alfred J. Urbano, is the District Director of the United States Immigration and Naturalization Service with his office at Portland, Oregon.

III.

That on January 4, 1965, petitioner left the aforesaid vessel and entered the United States.

IV.

That petitioner seeks political asylum in the United States of America and desires in the alternative not to be sent or returned to Yugoslavia or any other communist dominated country for the reason that he and his family have been persecuted by the Communists in Yugo-

slavia because they are anti-communist and petitioner should he return to Yugoslavia or a Communist country would be in danger of being persecuted, physically abused or killed.

V.

That petitioner has applied to the Immigration and Naturalization Service for a hearing upon the above claim and to this Honorable Court, and on the 18th day of January, 1965, by Order of the Honorable William East, United States District Judge, the matter was referred to the District Director for the presentation of evidence in accordance with 8 CFR 253.1(e).

VI.

That on January 19, 1965, pursuant to the aforesaid Order of the Court, the petitioner presented evidence to the Deputy District Director of Immigration and Naturalization at the Court House in Portland, Oregon and on the 26th day of January, 1965, the District Director of Immigration and Naturalization issued his ruling denying the petitioner's application for parole.

VII.

That the foregoing action of the District Director of Immigration and Naturalization was arbitrary and capricious and not supported by the evidence; that the said District Director of Immigration and Naturalization was biased against petitioner and was incapable of making a fair or impartial decision as to petitioner's claim.

VIII.

That your petitioner if returned to the vessel or to Yugoslavia or to any other Communist dominated country, he will be subject to physical persecution and in immediate danger of life and limb.

WHEREFORE, your petitioner prays for an Order of this Court:

1. Reversing the Order of January 25, 1965 of Alfred J. Urbano, District Director of the Immigration and Naturalization Service, and entering a Judgment and Order restraining the respondents from removing petitioner from the United States of America, or otherwise deporting or excluding him pursuant to 8 USCA Sec. 1253 (h); and

2. For such other and further relief as may be appropriate in the premises.

/s/ Gerald H. Robinson
GERALD H. ROBINSON
810 Standard Plaza
Portland, Oregon
Attorney for Petitioner

[Certificate of Service omitted in printing]

[Filed July 9, 1965]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-9

VESELIN VUCINIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

Civil No. 65-10

VELJKO STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

OPINION

EAST, District Judge.

The above-named petitioners in the above consolidated matters are nationals of Yugoslavia, and each was a member of the crew of the M/V SUNADIJA [*sic*], of Yugoslavian registry, on January 4, 1965. Vucinic was an ordinary seaman and Stanisic was the radio operator.

During the night of January 4, 1965, while the M/V SUNADIJA was in the Port of Coos Bay, Oregon, the petitioners, each holding an entry permit as visiting seamen issued by the respondent Naturalization Service, deserted the ship, with the intention of remaining in the United States.

The respondent Alfred J. Urbano (Urbano), District Director for Oregon, when advised of the desertion, re-

voked the petitioners' entry permits. 8 U.S.C. § 1282(b) (1964 ed.).

On January 7, 1965, the petitioners sought of Urbano parole to the United States pursuant to the provisions of 8 U.S.C. § 1253(h) (1964 ed.) on the grounds that each of them was nonsympathetic to the averred Communist Government of Yugoslavia, and should they return to Yugoslavia they would be subjected to physical persecution for their political beliefs.

Urbano on January 7, 1965 caused the petitioners to be interrogated by personnel of the respondents' Portland office, and, based upon the record of such interrogation, found in the exercise of his discretion that petitioners' grounds for parole were wanting, denied their applications for parole, and ordered them excluded and returned to their ship.

The petitioners then instituted these proceedings, seeking injunctive relief from Urbano's orders. Petitioners claimed they had sufficient entry status to entitle them to a hearing before a special inquiry officer, prescribed for regular deportation proceedings under 8 U.S.C. 1252 (b) (1964 ed.). An administrative grant of deportation suspension "has historically been exercised as an integral part of the deportation proceedings before the special inquiry officer." *Glavic* v. *Beechie*, 225 F.Supp. 24, 26 (S.D. Tex. 1963), *aff'd.* 340 F.2d 91 (5th Cir. 1964). This claim of a right to a special inquiry officer hearing was, and is, untenable. The sections of the Immigration and Nationality Act dealing solely with alien crewmen, 8 U.S.C. §§ 1281-87 (1964 ed.), permit revocation of a crewman's conditional entry permit when, as was true here, the crewman "does not intend to depart on the vessel . . . which brought him . . .". 8 U.S.C. § 1282(b) (1964 ed.). And that same section further provides that "[N]othing in this section shall be construed to require the procedure prescribed in section 252 [8 U.S.C. § 1252(b) (1964 ed.), discussed, *supra*,] in cases falling within the provisions of this subsection." And see *Glavic* v. *Beechie*, *supra*. However, pursuant to authority granted by 8 U.S.C. § 1182(d)(5) (1964 ed.), the Attorney General has promulgated a regulation authorizing a District Director to

parole into the United States an alien crewman "who alleges that he cannot return to a Communist, Communist-dominated, or Communist-occupied country because of fear of persecution in that country on account of . . . political opinion . . ." 8 C.F.R. § 253.1(e) (1965). This regulation, relating expressly and solely to alien crewmen, made it unnecessary for this Court to decide the issue of entry status that has, in some cases, proved crucial in denying certain noncrewmen aliens the opportunity to establish, during regular deportation proceedings, the likelihood of persecution for race, religion or certain opinions if deportation occurred. See, *e.g.*, *Leng Ma* v. *Barber*, 357 U.S. 185 (1958).

On January 18, 1965, this Court stayed any contemplated exclusion order of the petitioners and referred their causes back to Urbano for the purpose of holding an evidentiary hearing to receive such testimony and evidence the petitioners desired to produce in support of their claim of physical persecution if returned to Yugoslavia. On January 19 and 20, 1965, Urbano caused the evidentiary hearing to be held by William L. Pattillo (Pattillo), Deputy District Director for Oregon, and petitioners called and interrogated all witnesses and produced all evidence of their choice.

Based upon the record of such hearing, Urbano, on January 25, 1965, in the exercise of his discretion, found that:

> (a) The petitioners, upon their return to Yugoslavia, would probably be subjected to penalties provided by law for their voluntary desertion of their ship, and
>
> (b) The petitioners had failed to prove their claim of physical persecution for their political beliefs upon their return to Yugoslavia,

and accordingly denied the petitions for parole.

On January 27, 1965, the petitioners moved this Court to review Urbano's decision and order of January 25, 1965, on the grounds that the same was arbitrary, capricious, was not supported by the evidence, and that Urbano was biased against the petitioners.

The petitioners noticed the discovery depositions of Urbano and Pattillo, and this Court denied Urbano's and Pattillo's request for relief from such discovery. These depositions were taken on May 18, 1965, and have been filed herein, as well as the complete administrative files of the respondent Service's Oregon office relating to the petitioners, for review by this Court *in camera*. Also, the record of the evidentiary hearing is now before this Court.

The petitioners and Urbano have each filed motions for summary judgment in their respective favor upon the record before this Court.

At the threshold, the Court faces a challenge to its jurisdiction to review the proceedings before Urbano. To support its challenge, the Government cites 8 U.S.C. § 1105a(a) (1964 ed.), which limits review of certain determinations to appropriate Courts of Appeals. However, the indicated statute applies solely to judicial review "of all *final orders of deportation* heretofore or hereafter made against aliens within the United States pursuant to administrative proceedings *under section 1252(b) of this title* or comparable provisions of any prior Act, . . ." [Emphasis supplied.] By its very terms the provision is inapplicable to this case, even as interpreted in *Foti* v. *Immigration Service*, 375 U.S. 217 (1963) to include administrative denial of suspension of deportation sought pursuant to 8 U.S.C. § 1254(a)(1) (1964 ed.). The instant proceedings occurred under the provisions of the Immigration and Nationality Act relating solely to alien crewmen, 8 U.S.C. §§ 1281-87 (1964 ed.), and 8 C.F.R. § 253.1(e) (1963), *supra*, permitting parole for alien crewmen. Those statutes and that regulation are completely silent regarding judicial review of proceedings before a District Director relating to alien crewmen.

In *Glavic* v. *Beechie*, *supra*, the Court, facing a problem virtually identical to the one here, granted review, without apparent issue, concern, or discussion, under the judicial review section of the Administrative Procedure Act, 5 U.S.C. § 1009 (1964 ed.). While I question *Glavic's* failure to examine the assumption of jurisdiction more thoroughly, I conclude its result sound in that the issues presented there and in these proceedings deal with

fundamental Constitutional questions of due process. Were the petitioners in custody, they could raise these Constitutional issues in a habeas corpus proceedings; in the absence of custody, there is still no sound judicial reason why the petitioners cannot invoke the general jurisdiction of a district court to review administrative decision and order upon the Constitutional issue of lack of due process at the hands of the administrative agency or person. The liberty of a claimant on bail or personal recognizance in lieu of custody, cannot be a factor in determining whether a district court has jurisdiction to hear a federal claim. At liberty or in custody only determines the nature of the proceedings. I am not concerned with whether Congress could deny aliens in the position of these seamen judicial review. It has not explicitly done so, and I cannot conclude that it has done so implicitly.

Congressional denial of review should be clearly indicated. *Barefield* v. *Byrd*, 320 F.2d 455 (5th Cir. 1963), *cert. den.* 376 U.S. 928 (1964).

A further problem relating to reviewability is posed by these provisions of 5 U.S.C. § 1009(a) (1964 ed.):

> "Judicial review of agency action
>
> "Except so far as . . . (2) agency action is by law committed to agency discretion.
>
> "(a) Any person suffering legal wrong because of any agency action, . . . shall be entitled to judicial review thereof.
>
> * * * *
>
> "(e) So far as necessary to decision . . . the reviewing court shall . . . (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an *abuse of discretion* . . .; (2) contrary to Constitutional right. . . ." [Emphasis supplied.]

The foregoing quotation from § 1009 produces an unacceptable result if read literally. By its terms, the statute grants a court power to review an abuse of discretion except so far as the agency may exercise discretion. The exception altogether consumes the power. However, as

the leading authority has suggested, "[N]othing in the legislative history shows an intent to produce such a drastic change; probably no one during the Act's preparation put these words together in this juxtaposition." Davis, *Administrative Law Text* § 28.16 (1958). To solve the verbal puzzle, Davis suggests the word "committed" be emphasized. "So far as the action is by law 'committed' to agency discretion, it is not reviewable—. . .; it is not 'committed' to agency discretion to the extent that it is reviewable. The two concepts 'committed to agency discretion' and 'unreviewable' have in this limited context the same meaning. The result is that the pre-Act law on this point continues." *Ibid.*

It is certain that the granting or withholding of an alien crewman's parole into the United States under the Attorney General's regulation, 8 C.F.R. § 253.1(e) (1965), lies within the District Director's "discretion" in the sense that he is responsible for receiving and weighing the relevant evidence and that the courts will not substitute judgment. However, I am unable to conclude that the decision relating to parole is "committed to [the Director's] discretion" in the sense, to apply Davis's analysis, of making his findings, conclusions and order unreviewable—even for arbitrariness, capriciousness, or abuse of discretion. Moreover, courts have often refused to recognize even a fairly explicit denial of reviewability when the issues of arbitrariness or abuse of discretion are raised. *Hamel* v. *Nelson*, 226 F.Supp. 96 (N.D. Calif. 1963).

> "[Section 1009(a)] . . . does not extend 'the jurisdiction of the federal courts to cases not otherwise within their competence. . . . The purpose of §[1009(a)] is to define the procedures and manner of judicial review of agency action, rather than to confer jurisdiction upon the courts.' Ove Gustavsson Contracting Co. v. Floete, 2 Cir. 1960, 278 F.2d 912, 914." *Barnes* v. *United States*, 205 F.Supp. 97, 100 (D.Mont. 1962).

I conclude that the exception relating to discretion contained in 8 U.S.C. § 1009 (1964 ed.), does not deprive

this Court of jurisdiction to review Urbano's findings, conclusions, and order upon the contentions of the petitions above outlined, and further that 8 U.S.C. §§ 1009 (b) (e) provide procedures and scope of judicial review of Urbano's findings, conclusions, and orders upon the issues raised by the contentions of review of the petitions.

Having so concluded, it is my obligation to deal with the record of the evidentiary hearing upon which Urbano's findings, conclusions, and order are premised, under the searchlight of petitioners' contentions.

I have perused *in camera* the administrative files of respondent Service and find nothing therein that in anywise tends to impeach or discredit the discovery depositions testimony of Urbano and Pattillo.

I have reviewed the entire record as developed and placed before Urbano upon the petitioners' claim of physical persecution for political belief if returned to Yugoslavia, and conclude that Urbano did not abuse his discretion in denying the applications for parole, nor are his findings and order lacking a foundation. Evidence substantiating the petitioners' claim of physical persecution for their political beliefs is conspicuous by its complete absence.

The petitioners make no claim that Urbano's decision and order is illegal.

I find the entire record before Urbano and this Court devoid of any evidence whatsoever that Urbano acted fraudulently, arbitrarily, or capriciously in his evaluation of the evidence before him.

The petitioners have claimed Urbano was personally biased in denying their parole and that he should have been disqualified. The asserted bias is based in large part upon alleged facts known prior to the hearing. Under § 7(a) of the Administrative Procedure Act, 5 U.S.C. § 1006(a) (1964 ed.), disposition of allegations of bias is initially the agency's responsibility. The allegations are to be raised by "the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification," and "the *agency* shall determine the matter as a part of the record and decision in the case." [Emphasis supplied.] However, the petitioners raised the issue of

personal bias for the first time in these proceedings following the evidentiary hearing, and under the provisions of § 1006(a), as usually applied, lost their opportunity to assert the question of bias. Davis, *Administrative Law Text* § 12.06 (1958). "The issue of bias must be raised neither too soon nor too late." *Ibid.* Nevertheless, the Court has examined the record before it and finds the claims of bias groundless.

The evidentiary record discloses that each of these petitioners enjoyed a good civilian and governmental status in his country at the time he departed on the voyage ultimately bringing him to the United States, in spite of his now-avowed anti-Communistic political beliefs.

What "physical persecution," if any, they will receive upon their return to their own country, will be due to their voluntary desertion of their ship and other voluntary acts and averments occurring since.

These causes have aroused a great deal of public sympathy for the petitioners, all without full advice as to the facts and circumstances. Granted, the petitioners may be anti-Communistic in their political beliefs, and in all probability would be good citizens of the United States; nevertheless, Congress has not seen fit to provide for lawful entry or permanent refuge in the United States (other than by established quotas for citizens of nations with Communistic Governments) on the sole ground that those individuals are not sympathetic with that Communistic Government. Neither Urbano nor this Court can make such legislation.

The respondents' motion for summary judgment in their favor should be allowed, and counsel for the respondents may submit appropriate order of summary judgment dismissing the petitioners' complaints and causes and dissolving the stay order now in effect.

DATED July 9, 1965.

[Filed July 20, 1965]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 65-10

VELJKO STANISIC, PETITIONER

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

JUDGMENT

The above cause having come on before the Court upon the petitioner's "Motion For Review" and upon the government's Motions for Summary Judgment and the Court having considered the administrative record, documents, affidavits and depositions together with the memorandum and arguments of counsel and having filed its written Opinion dated July 9, 1965 herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that summary judgment be and it is granted to the government, that the earlier orders staying and restraining the removal of the petitioners from the United States be and they are dissolved, and that this case be and it is dismissed.

Dated this 20th day of July, 1965.

/s/ William G. East
WILLIAM G. EAST
District Judge

PRESENTED BY:

/s/ Donal D. Sullivan
DONAL D. SULLIVAN
First Assistant U. S. Attorney

[Filed June 22, 1966]

BEFORE THE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of) A 15 620 991
VELJKO STANISIC, PETITIONER) PETITION FOR PAROLE

Pursuant to the provisions of 8 USCA 1254 and 8 USCA 1253, and 1255 your petitioner shows:

I.

Since the date of the last hearing herein the applicable statute has been amended and liberalized on October 3, 1965 by Public Law 89-236, effective January 1, 1966, so as to eliminate the requirement of physical persecution, and the Attorney General is now authorized, pursuant to 8 USCA 1253 (h) as amended, to withhold deportation of an alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion, or political opinion.

II.

Your petitioner stipulates that the record made heretofore and herein is accepted as part of the record of this petition and shows anticipated persecution on account of religion and political opinion.

III.

Your petitioner has pending in the Circuit Court in Lane County, Oregon, a case for damages for assault and battery in which he is the plaintiff, and the deportation of your petitioner will deprive him of his right to recovery for damages and property wilfully destroyed.

WHEREFORE, your petitioner respectfully requests that:

1. Deportation to Yugoslavia be stayed on the basis of anticipated persecution on account of religious

and political opinion, and on account of pending litigation.

2. A hearing be held in due course before a Special Inquiry Officer of the Immigration Service.
3. In the alternative and in the event of denial of this petition, your petitioner may depart voluntarily from the United States at his own expense.

/s/ Veljko Stanisic

UNITED STATES DEPARTMENT OF JUSTICE

Immigration and Naturalization Service
Portland, Oregon

In the Matter of	)	A 15 620 991
VELJKO STANISIC, PETITIONER	)	PETITION FOR PAROLE

The petitioner in this matter served through his attorney, G. Bernard Fedde, a Petition for Parole into the United States. In this petition he alleges in Item I that since the date of his last hearing the applicable statute has been amended and liberalized on October 3, 1965 by Public Law 89-236, so as to eliminate the requirement of physical persecution.

The petitioner alleges in Item III that he is plaintiff in an assault and battery case pending in the Circuit Court in Lane County and that his deportation will deprive him of his right to recovery. He further requests deportation be stayed on the basis of anticipated persecution on account of religious and political opinion and on account of pending litigation; further, that a hearing be held in due course before a Special Inquiry Officer of the Immigration and Naturalization Service and in the alternative that he be permitted to depart voluntarily from the United States at his own expense.

In answer to Item I the petition no doubt refers to the amendment of 8 U.S.C. 1253(h) which was amended by the Act of October 3, 1965, Public Law 89-236. The matter as to whether that provision of regulations was pertinent to the petitioner's case was decided by the United States District Court at Portland, Oregon and the Court found that this regulation was not applicable to this petitioner's case and that the Immigration and Naturalization Service had properly decided the matter under 8 C.F.R. 253.1(e); however, the revision of 8 U.S.C. 1253(h) served only, as relates to this matter, to make it read identical to the provisions of 8 C F.R. 253.1(e) as it existed at the time the original decision was made, and as it now exists.

In answer to Item III, the Clerk of the Circuit Court, Lane County and the Clerk of the District Court at Lane County, advise that there are no actions pending in which the petitioner is a party. Further, the United States District Court at Portland, Oregon has already ruled that the petitioner is not entitled to a hearing before a Special Inquiry Officer of this Service.

The petitioner is amenable to removal from the United States under the provisions of Section 252(b) of the Immigration and Nationality Act. Under these provisions he is to be placed in the custody of the steamship company which brought him to the United States and his deportation from the United States is to be effected by the steamship company.

In view of the foregoing and in view of the fact that the United States District Court at Portland, Oregon has, after long deliberation, rendered a decision that the petitioner would not be subject to persecution on account of race, religion, or political opinion, and that the proceedings held in the petitioner's case were properly held under the provisions of 8 C.F.R. 253.1(e), and he was not en-

titled to a hearing before a Special Inquiry Officer, the petition is denied in its entirety.

/s/ Alfred J. Urbano
ALFRED J. URBANO
District Director

June 23, 1966

[Filed June 23, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 66-333

VELJKO STANISIC, PETITIONER

-vs-

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

COMPLAINT

Comes now the petitioner and alleges:

I.

Petitioner is an alien and a citizen of Yugoslavia and until recently, a crewman aboard the SS Sumadija, a Yougoslavia [*sic*] flag vessel which docked at Coos Bay, Oregon, on or about January 4, 1965.

II.

Respondent, Alfred J. Urbano, is the District Director of the United States Immigration and Naturalization Service with his office at Portland, Oregon.

III.

That on January 4, 1965, petitioner left the aforesaid vessel and entered the United States.

IV.

That petitioner seeks political asylum in the United States of America and desires in the alternative not to be sent or returned to Yugoslavia or any other communist dominated country for the reason that he and his family have been persecuted by the Communists in Yugoslavia because they are anti-communist and Greek Orthodox, and petitioner, should he return to Yugoslavia or a Communist country, would be in danger of being persecuted, abused, or killed for his religious and political opinions.

V.

That petitioner has applied through a Petition for Parole to the Immigration and Naturalization Service for a hearing upon the above complaint before a Special Inquiry Officer, but the lawful administrative procedure has been ignored by the decision offhand of the District Director of Immigration without any hearing whatever.

VI.

That on June 21, 1966 the District Director of Immigration and Naturalization Service issued his order directing that the petitioner appear for removal from the United States on June 24, 1966, about 70 hours later.

VII.

That the foregoing action of the District Director of Immigration and Naturalization was arbitrary and capricious in the following particulars:

1. The District Director refused to grant any real hearing on the record and facts in light of the statute applicable thereto.

2. The District Director refused to give any opportunity to present new evidence.
3. The District Director deprived the petitioner of his constitutional right to procedural due process and a judicial hearing on the merits.
4. The determination of the District Director is not supported by the evidence.
5. The District Director refused to grant a hearing before a Special Inquiry Officer.
6. The District Director has consistently shown his personal prejudice and yet has insisted on deciding all matters in connection with this case.

VIII.

That the vessel upon which the petitioner came to the United States has long since departed from the territorial waters of the United States, and there is no haste to overtake said vessel.

IX.

That your petitioner if returned to Yugoslavia or to any other Communist dominated country will be subject to religious and political persecution and is in immediate danger of life and limb. That there is no other adequate remedy at law.

WHEREFORE, your petitioner prays for an Order of this Court:

1. Reversing the Order of June 23, 1966, of Alfred J. Urbano, District Director of the Immigration and Naturalization Service, and pursuant to 8 USCA Sec. 1253(h), entering a Judgment and Order restraining the respondents from removing petitioner from the United States of America, or otherwise deporting or excluding him pending trial of the issues; and

2. For such other and further relief as may be appropriate in the premises.

/s/ Don Eva
DON EVA

/s/ G. Bernhard Fedde
G. BERNHARD FEDDE
Attorneys for Petitioner
1125 Failing Bldg.
Portland, Oregon 97204
226-2688

[Alien's affidavit of verification omitted in printing]

[Filed June 23, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 66-333

VELJKO STANISIC, PETITIONER

-vs-

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

MOTION TO RESTRAIN

Upon the complaint of the petitioner and the affidavit of his counsel annexed thereto, petitioner moves the Court as follows:

1. To issue a temporary restraining order suspending and restraining the respondents, their agents, servants, employees and attorney, and all persons in active concert

and participation with them, from taking the petitioner into custody or deporting him from the United States pending a hearing upon the issuance of a preliminary injunction sought hereinafter in this motion and the determination thereof.

2. The grounds of this motion, as more fully set forth in the Complaint and attached affidavit of counsel, among others, are:

(a) That petitioner has pending an administrative hearing upon which no determination has yet been made.

(b) That respondents failed and refused to exercise the discretion vested in them by law as a prerequisite to entering an order denying petitioner's application for suspension of deportation and directing that he depart from the United States.

(c) Unless the respondents are enjoined they will take the plaintiff into custody and deport him thus ousting this court of jurisdiction over the petitioner which will in turn deprive him of any remedy to adjust his status.

(d) The petitioner is an alien eligible for suspension of deportation by reason of the provisions of Section 19 (e) of the Immigration Act of 1917, as amended.

(e) Unless the respondents are restrained pending the final disposition of this request for judicial review, the petitioner will be irreparably injured even though in the final analysis judgment might be rendered in his favor.

/s/ Don Eva
DON EVA

/s/ G. Bernhard Fedde
G. BERNHARD FEDDE
Attorneys for Petitioner
1125 Failing Bldg.
Portland, Oregon 97204

[Affidavit of Counsel omitted in printing]

[Filed June 23, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Civil No. 66-333

VELJKO STANISIC, PETITIONER

-vs-

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

ORDER TO SHOW CAUSE

TO: UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service:

Upon reading and filing the verified complaint of petitioner in this suit, and the affidavit of G. Bernhard Fedde, and it appearing to the satisfaction of the court therefrom that this is a proper case for granting a temporary restraining order, and that unless the temporary restraining order prayed for in said complaint be granted great injury will result to the petitioner before the matter can be heard on notice; now, therefore,

It is hereby ORDERED that the respondents, United States Immigration and Naturalization Service and Alfred J. Urbano, District Director, United States Immigration and Naturalization Service, be and appear before this courtroom of department ..... thereof, at the hour of 9 AM, O'clock, on June 24, 1966, then and there to show cause, if any they have, why they, their agents, servants, employees, and attorney, should not be enjoined and restrained during the pendency of this suit from taking the petitioner, Veljko Stanisic, into custody or de-

porting him from the United States until after a full hearing upon the pending litigation.

Dated this 23rd day of June, 1966.

/s/ John F. Kilkenny
District Judge

[Filed June 24, 1966]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Civil No. 66-333

VELJKO STANISIC, PETITIONER

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Services [*sic*], RESPONDENTS

FINDINGS AND JUDGMENT

The above cause having come on before the Court upon the petitioner's Motion to Restrain and petitioner appearing by G. Bernhard Fedde and the respondents appearing by Sidney I. Lezak, United States Attorney, and the Court having considered the record in Civil 65-10 in this Court between the same parties and the opinion of the Honorable William G. East filed in that case and arguments having been made, and

It appearing from the entire record that there was substantial evidence in support of the findings and order of respondents, and being now fully advised,

IT IS ORDERED, ADJUDGED, and DECREED that petitioner's motion to restrain be, and the same is hereby, denied.

DATED this 24th day of June, 1966.

/s/ John F. Kilkenny
District Judge

[Filed July 29, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

No. 66-333

VELJKO STANISIC, PETITIONER

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

MOTION

COMES NOW the plaintiff and respectfully moves this Court as follows:

1. For an Order directing the defendants United States Immigration and Naturalization Service, and Alfred J. Urbano, its District Director, to surrender to the Clerk of the United States District Court for inclusion in the record on appeal in the above entitled cause the entire administrative file which was submitted to the Honorable William G. East for inspection at the time of hearing and deciding Case No. 65-10, involving the same parties.

2. For an Order authorizing the Clerk of the District Court to send the originals only of the depositions in the file of Case no. 65-10.

3. For an Order sending the entire file in Case No. 65-10 together with the file in this case No. 66-333 now on appeal.

4. For an Order granting an extension of thirty days for docketing the appeal in the Court of Appeals.

This Motion is based on Rule 73 (g).

July 29-1966

/s/ G. Bernhard Fedde
Of Attorneys for Petitioner
G. BERNHARD FEDDE
1125 Failing Bldg.
Portland, Oregon 97204

Presented by

/s/ G. Bernhard Fedde
G. BERNHARD FEDDE

SO ORDERED:

/s/ John F. Kilkenny
United States District Judge

Excerpts from Yugoslav laws tendered to court of appeals on morning of oral argument (May 10, 1967):

International Labour Office

Legislative Series 1949—Yug. 3

YUGOSLAVIA 3

Decree: Merchant Seamen

Decree respecting the crews of ships in the Mercantile Marine of the Federative People's Republic of Yugoslavia. Dated 17 September 1949. (*Sluzbeni List*, 21 September 1949, No. 80, p. 1117.)

* * * *

II. CREWS

* * * *

11. Where the service or employment relationship of a member of the crew terminates in the course of a voyage and it is necessary for such member of the crew to continue his work, the master may keep him at work as long as the necessity lasts.

12. The member of the crew may not apply to any body in a foreign port other than the master or the Yugoslav consular representative, if there is such a representative at the port in question.

* * * *

14. No member of the crew shall leave his prescribed duties on board or leave the ship without the permission of the master or his deputy.

* * * *

IV. DISCIPLINARY LIABILITY OF MEMBERS OF THE CREW

46. Failure on the part of members of the crew to carry out their duties shall constitute either offences or grave offences against discipline.

47. By offences against discipline shall be understood less serious cases of failure to carry out duties, or conduct prejudicial to the good name of the service, namely:

(1) leaving the ship without permission;

* * * *

(4) failure to observe the rules of the service;

* * * * *

48. By grave offences against discipline shall be understood serious cases of failure to carry out duties or conduct prejudicial to the good name of the service.

Grave offences against discipline shall include the following, in addition to the offences referred to in section 65 *(c)* of the Civil Service Act:

* * * *

(5) unjustified absence from the ship;

* * * *

50. The penalties for grave offences against discipline shall be, in addition to the penalties prescribed in section 67 of the Civil Service Act, confinement on board for not more than seven days—with permission, however, to go on shore once during each stay of the ship in port—and also forfeiture of the right to serve at sea for not less than one and not more than three years or forfeiture of such right for ever on State ships.

51. Penalties in respect of grave offences against discipline shall be decided by the appropriate disciplinary court if it is possible for disciplinary proceedings to be instituted in such a court immediately after the grave offence has been committed. If that is not possible, the master of the ship shall impose penalties in respect of grave offences against discipline, with the exception of the penalties of forfeiture of the right to serve at sea and dismissal from the service.

52. No disciplinary sanction may be imposed on any member of a crew until he has been heard.

The master shall fix the penalty in a decision in writing. A copy of the decision shall be delivered to the shipowner, and the case shall be entered in the ship's logbook.

53. The member of the crew or the trade union organisation shall have the right to appeal against the decision of the master imposing a penalty in respect of a grave offence against discipline to the appropriate disciplinary

court, whose decision shall be final. The application shall be lodged with the master of the ship within 15 days of the delivery of the decision.

The appeal shall not stay execution of the penalty.

54. If the member of the crew has through the offence or grave offence against discipline caused material loss or damage to the ship, the master may in his decision order compensation not exceeding 5,000 dinars to be paid for the loss or damage incurred.

The member of the crew shall have the right to appeal through the master of the ship to the shipowner against the decision respecting compensation; the appeal shall be lodged within 15 days of the delivery of the decision.

55. In all other matters the general provisions respecting the disciplinary and material liability of civil servants or persons employed in economic undertakings of the State shall apply to members of crews.

International Labour Office

Legislative Series 1948—Yug. 1

YUGOSLAVIA 1

Decree: Contracts of Employment

Decree respecting the formation and cessation of the employer-employee relationship. No. 711 Dated 27 September 1948. (*Sluzbeni List Federativne Narodne Republike Jugoslavije*, 2 October 1948, No. 84, p. 1293; *corrigenda: ibid.*, 13 October 1948, No. 87, p. 1370.)

* * * * *

[31. If any manager or other responsible person in an undertaking or any other employer—]*

* * * * *

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* Bracketed matter was not part of the excerpted material tendered to the court of appeals. It has been supplied from the original by the compiler of the Appendix to give context to the provisions immediately following.

(4) before the expiration of the agreed term or completion of the specified work, terminates a relationship contracted in writing for a specified time or for the execution of specified work (article 18), unless there is a written agreement to dissolve or vary the contract of employment;

(5) fails to report to the appropriate executive committee of the district (town, ward) people's committee any employee who has terminated a relationship of employer and employee without notice or abandoned work before the expiration of the period of notice (article 24);

* * * *

(8) through his own fault fails to fulfil his obligations under a contract as regards transport, board and lodging for the employee;

* * * *

he shall be punished with a fine of not less than 500 and not more than 10,000 dinars.

32. If any employee—

(1) terminates a relationship with an employer without notice or abandons work before the expiration of the period of notice, otherwise than in the cases mentioned in article 26 of this Decree;

* * * *

(3) before the expiration of the period of notice or before the completion of the specified work, terminates a relationship contracted in writing for a specified time or for the execution of specified work (article 18), unless there is a written agreement to dissolve or vary the contract of employment;

* * * *

he shall be punished with a fine of not less than 100 and not more than 5,000 dinars or a term of corrective labour not exceeding one month.

33. Administrative penal proceedings shall be conducted and the penalties imposed by the executive committees of the district (town, ward) people's committees in ac-

cordance with the provisions of the Basic Law on Offences.[1]

At the request of the labour inspection office or manpower board, or if the minister of labour of the people's republic or Federal Minister of Labour so determines, administrative penal proceedings for offences under article 31 of this Decree may also be conducted and the penalties imposed by the minister of labour of the people's republic or the Federal Minister of Labour, after proceedings have been carried out by an official designated by the minister of labour.

Where administrative penal proceedings have already commenced before the appropriate executive committee of the district (town, ward) people's committee, the minister of labour of the people's republic or the Federal Minister of Labour may take over the commenced proceedings.

* * * *

International Labour Office

Legislative Series 1965—Yug. 4

YUGOSLAVIA 4

Decree to promulgate a Basic Act respecting employment relationships. Dated 4 April 1965. (*Sluzbeni List*, 7 April 1965, No. 17, Text 352; errata: ibid., 5 May 1965, No. 21, p. 982.)

* * * *

8. *Cessation of Employment in Organisations Where Workers Are Employed*

96. * * *

* * * *

(3) A person ceasing to work in an organisation by his own unilateral decision and contrary to the provisions of subsection (2) of this section shall be deemed to have committed a serious breach of his duties.

---

[1] Law of 3 December 1947 (*Sluzbeni List FNRJ*, 17 December 1947, No. 107, p. 1497).

(4) A person ceasing to work by his own unilateral decision, as provided in subsection (3), shall compensate the organisation to an amount equal to the average advances payable to him on his personal income for the period for which he was required to continue working, unless the prejudice sustained by the organisation as a result of his decision was more serious.

* * * * *

CRIMINAL CODE

PUBLICHED [*sic*] BY UNION OF JURISTS' ASSOCIATIONS
OF YUGOSLAVIA
BEOGRAD
1960

* * * * *

The Punishment of Severe Imprisonment

Article 28

The punishment of severe imprisonment may not be shorter than one year nor longer than fifteen years, and it shall be pronounced in round years and months.

Commutation of the Death Penalty

Article 29

(1) The death penalty may be commuted by amnesty or reprieve to severe imprisonment for a term of twenty years.

(2) Likewise also the Court may, for justified reasons, commute the death penalty to severe imprisonment for a term of twenty years.

The Punishment of Imprisonment

Article 30

(1) The punishment of imprisonment may not be shorter than three days nor longer than three years.

(2) The punishement [*sic*] of imprisonment shall be pronounced in round years and months, and in the event of terms of up to three months even in round days.

Articles 31 to 35

Abolished.

The Punishment of Confiscation of Property

Article 36

The punishment of confiscation of property consists in the seizure of the property of the convicted person without compensation within limits provided by law.

Fine

Article 37

(1) A fine may not amout [*sic*] to less than one-thousand dinars. Unless otherwise provided by law, a fine may be imposed up to the amount of one-hundred thousand dinars, and for criminal offences committed for personal gain up to one million dinars.

(2) The judgment rendered shall determine the term for the payment of fine, which term may not be less than fiften [*sic*] days nor more than three months, but in warranted cases the Court may allow the convicted to pay the fine in instalments. In such a case the Court shall determine the mode of payment and the term of payment, which may not exceed the period of two years.

Legal Consequences of Conviction

Article 37A

(1) It may be prescribed by law that the convictions for particular criminal offences or to particular punishments shall involve these legal consequences:

1) cessation of the exercise of elective functions in the State organs, the organs of social self-government, in economic or social organizations:

2) termination of service, employment, office or the exercise of a particular profession;

3) loss of rank;
4) forfeiture of decorations;
5) debarment from coming out in the press, on the radio or television or at public assemblies, from participation in the founding of associations and from exercise of publishing activity;
6) debarment from the performance of particular tasks in the State organs the organs of social self-government, in economic and social organizations;
7) debarment from acquiring a particular office or profession.

(2) The law prescribing the legal consequences from Paragraph 1, Point 5 to 7, of this article shall also determine their duration, which may not be longer than ten years from the date when the punishment has been served, pardoned or extinguished by prescription. That law may also provide the conditions under which these legal consequences may terminate even before the expiration of the period for which they were provided.

(3) The legal consequences from Paragraph 1, Point 2 to 5 and 7, of this article may be provided by Federal Law only, and the legal consequences from Point 1 and 6 by the laws of the People's Republics also, within their jurisdiction.

* * * *

General Rule Relating to Fixing the Degree of Punishment

Article 38

For a particular criminal offence the Court shall fix the degree of punishment within the limits provided by law for that offence, with due consideration for all the circumstances influencing the punishment to be severer or milder (aggravating and extenuating circumstances), and especially the degree of criminal liability, the motives from which the offence was committed, the intensity of the danger or wrong to the protected object, the circumstances under which the offence was committed, the earlier life, the personal circumstances and the behaviour of the offender after the commission of the criminal offence.

* * * *

Application of Criminal Law Against Whoever Commits a Criminal Offence on the Territory of Yugoslavia

Article 91

* * * *

(2) The criminal law of Yugoslavia shall also be applied against whomsoever committed a criminal offence on a domestic ship without distinction as to is [*sic*] whereabouts at the time of commission of the offence.

* * * *

Application of the Criminal Code Against Whoever Committs [sic] Particular Criminal Offences Abroad

Article 92

The present Code shall be applied against whoever committs [*sic*] outside the territory of Yugoslavia any of the criminal offences provided by the present Code in Articles 100 to 112, 114 to 118, 120, 121 and in Article 221 in so far as the offence relates to domestic currency.

* * * *

Counter-Revolutionary Attack Against the State and Social Order

Article 100

Whoever commits an act aimed at overthrowing by force or in another unconstitutional way the authority of the working people or at deposing the elected constitutionally established representative bodies, Federal, Republican, autonomous or local, as well as the executive organs of those representative bodies; or whoever commits an act aimed at undermining the economic foundations of socialist construction; or whoever commits an act aimed at breaking up the unity of the peoples of Yugoslavia; or at changing the federative organization of the State by force or in another unconstitutional way, shall be punished with severe imprisonment.

* * * *

Participating in Hostile Activity Against Yugoslavia

Article 109

The citizen of Yugoslavia who with intent to overthrow the State and social order or for any other hostile activity against Yugoslavia establishes contact with a foreign State, foreign organization or a particular foreign or refugee group of persons, or who assists them in the performance of hostile activities,

shall be punished with severe imprisonment.

Escape for Purposes of Hostile Activity

Article 110

(1) The citizen of Yugoslavia who for purposes of performing hostile activity against his homeland escapes abroad, or prepares to escape, or remains abroad without authorization,

shall be punished with severe imprisonment of up to twelve years.

(2) Whoever creates a group for moving escapees abroad or becomes a member of such a group,

shall be punished with severe imprisonment.

* * * *

Hostile Propaganda

Article 118

(1) Whoever calls for or incites with writings, speech or otherwise the violent or unconstitutional change of the social or State order, the overthrow of the representative bodies or their executive organs, the breaking up of the brotherhood and unity of the peoples of Yugoslavia or resistance to the decisions of the representative bodies or their executive organs which are of significance for the protection and development of socialist social relationships, the security or defense of the country, or whoever represents the social-political conditions in the country maliciously and untruthfully,

shall be punished with severe imprisonment of up to twelve years.

(2) Whoever infiltrates himself into the territory of Yugoslavia for the performance of hostile propaganda, or whoever commits the offence from Paragraph 1 of this article aided or influenced from abroad,

shall be punished with severe imprisonment.

(3) Whoever performs infiltration of agitators or propaganda-material into the territory of Yugoslavia

shall be punished with severe imprisonment of not less than three years.

Provocating to National, Racial or Religious Intolerance, Hatred or Discord

Article 119

(1) Whoever, with propaganda or otherwise, provocates or fans national, racial or religious hatred or discord between the peoples and nationalities living in Yugoslavia [*sic*],

shall be punished with severe imprisonment of up to twelve years.

(2) If the offence from Paragraph 1 of this Article is carried on systematically or by exploiting one's office or function, or if disorder, the commission of violence or other grave consequences occurred as a result of the offence,

the offender shall be punished with severe imprisonment.

(3) Whoever provocates national, racial or religious intolerance by insulting the citizens or otherwise,

shall be punished with severe imprisonment.

* * * *

Grave Criminal Offences Against the People and the State

Article 122

For offences from Articles 100, 104, Paragraph 3, 107, 116 and 117, Paragraph 1 of the present Code, if they were committed in a state of alert, mobility or war, or if

they caused death to some person, or if they were accompanied by grave violence, or if they caused a threat to the security, the economic or military capacity of the State,

the perpetrator shall be punished with severe imprisonment of not less than ten years or with the penalty of death.

Inflicting the Punishment of Confiscation of Property

Article 123

In pronouncing a sentence severer than three years of severe imprisonment, the Court may punish the perpetrator of a criminal offence against the people and the State with confiscation of property.

* * * *

Damaging the Reputation of the State, Its Organs and Representatives

Article 174

Whoever brings the Federal People's Republic of Yugoslavia, a people's republic, their flag or coat of arms, their highest organ of State authority or the representatives of the highest organs of State authority, the Armed Forces or the supreme Commander into derison [*sic*],

shall be punished with imprisonment of not less than three months.

[Filed February 9, 1968]

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 21272

VELJKO STANISIC, PETITIONER

-vs-

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE and ALFRED J. URBANO, District Director, United States Immigration and Naturalization Service, RESPONDENTS

MOTION

COMES NOW the petitioner and moves the court for an order requiring the respondent, United States Immigration and Naturalization Service, Department of Justice, to ascertain through diplomatic representations of the United States Government to the Yugoslav Government:

1. The exact charges, if any, which will be made against the petitioner in the event he is returned to Yugoslavia.
2. The maximum punishment which will be inflicted.
3. To request the Yugoslav Government to give guaranties that the petitioner will not be subjected to persecution, economic, psychological or physical, in the event he is returned to Yugoslavia, and in the event he is jailed, that he be assured of humane treatment and reasonable and seasonable access to him by his legal counsel and family in Yugoslavia, in the event he is returned to Yugoslavia.

And the petitioner further moves the court, in the event that the court affirms the decision of the United States District Court, for an order suspending further deportation proceedings until a satisfactory answer and guaranties have been received from the Yugoslav Government.

The foregoing motion is made on the basis of fact that the Yugoslav Government is a Communist Dictatorship, of which this court can take judicial notice, and upon the following attachments which are made part of this motion by reference:

1. Page 124 of the issue of News Week magazine, a national news magazine, dated May 16, 1966, containing therein an article entitled "The Ordeal of Djilas".
2. An Associated Press article appearing in the Thursday, August 11, 1966 edition of the Oregonian published in Portland, Oregon, relating to the jailing of Mihajlo Mihajlov.
3. Page 44 of the issue of News Week Magazine, a national news magazine, dated April 3, 1967, containing therein an article entitled "Yugoslavia, Conversation with Djilas".
4. An Associated Press article appearing in the Thursday, April 20, 1967, edition of the Oregonian published in Portland, Oregon, relating to the punishment of one Mihajlo Mihajlov.
5. An Associated Press article appearing in the Wednesday, October 11, 1967, issue of the Oregonian, published in Portland, Oregon, relating to the punishment of Marjan Rozanc.

/s/ G. Bernhard Fedde
G. BERNHARD FEDDE
Attorney for Petitioner

[Filed April 17, 1968]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21,272

VELJKO STANISIC, APPELLANT

v.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ETC., APPELLEES

ORDER

Before: BROWNING, DUNIWAY, and ELY, Circuit Judges.

Appellant's motion of February 8, 1968, filed in this court on February 9, 1968, is denied.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21,272

VELJKO STANISIC, APPELLANT

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ETC., APPELLEES

[April 17, 1968]

Appeal from the United States District Court
for the District of Oregon

Before: BROWNING, DUNIWAY, and ELY, Circuit Judges.

BROWNING, Circuit Judge:

Appellant Stanisic, a national of Yugoslavia, arrived in Coos Bay, Oregon, as a crewman board the M-V SUMADIJA, a Yugoslavian vessel. He was issued a shore leave permit, authorizing him to go ashore while his ship was in port, by a United States immigration officer pursuant to 8 U.S.C. § 1282(a)(1) (1964) and 8 C.F.R. § 252.1(d)(1).

Three days later, after several visits ashore, appellant presented himself at the office of the District Director of the Immigration and Naturalization Service at Portland, Oregon, and requested asylum. His landing permit was immediately revoked under the authority of subsection (b) of section 1282, which provides that "any immigration officer may, in his discretion, if he determines that an alien . . . does not intend to depart on the vessel or aircraft which brought him, revoke the conditional permit to land which was granted such crewman under the provisions of subsection (a)(1) of this section, take such crewman into custody, and require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and detain him on board such vessel or aircraft, if practicable, and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States. . . . Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection."

On the following day appellant was offered an opportunity to make a showing before the District Director in support of his claim for asylum under 8 C.F.R. § 253.1(e), which provides that an alien crewman whose "conditional landing permit issued under § 252(d)(1) of this chapter is revoked who alleges that he cannot return to a Communist . . . country because of fear of persecution in that country on account of race, religion, or political opinion may be paroled into the United States under the provisions of section 212(d)(5) of the Act [8 U.S.C. § 1182(d)(5)] . . . ."

Appellant's counsel refused the offer, contending that appellant was entitled to have his claim considered, not as

an application for parole under the regulation, but rather as a petition for stay of deportation under 8 U.S.C. § 1253 (h) (1964), which (as it then read) authorized the Attorney General to withhold deportation "of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution . . . ." Appellant's counsel contended that the claim should be heard in accordance with the procedures established by 8 U.S.C. § 1252(b) (1964), which included a hearing before a Special Inquiry Officer with a full array of procedural protections, followed by administrative review.

The District Director denied appellant's claim for asylum for want of a supporting showing, and ordered that appellant be returned to his ship. Appellant's counsel filed suit in the court below seeking review of the District Director's order and injunctive relief.

The district court held that appellant was not entitled to a section 1252(b) hearing because of the express provision of section 1282(b), quoted above, that "Nothing in this section shall be construed to require the procedure prescribed in section 1252 of this title to cases falling within the provisions of this subsection." However, the court stayed the District Director's order and referred the matter back to the District Director with instructions to hold a hearing under 8 C.F.R. § 253.1(e).

Appellant offered evidence in support of his claim before a delegatee of the District Director. On the basis of the record made, the District Director concluded that the facts "do not establish that applicant has shown that he would be physically persecuted if he were to return to Yugoslavia," and denied relief. The district court, which had retained jurisdiction, sustained the administrative action, and dissolved the stay order. *Stanisic* v. *Immigration & Naturalization Service*, 243 F.Supp. 113 (D. Ore. 1965).

Appellant did not appeal, but instead unsuccessfully petitioned Congress for a private bill. When the District Director thereafter ordered appellant to appear for removal, appellant submitted a renewed application for stay of deportation under section 1253(n), pointing out that subsequent to the hearing by the District Director on appellant's prior application, the statute had been amended

to remove the limitation of relief to cases involving "physical" persecution. Appellant requested a full section 1252(b) hearing under the revised standard. He also sought permission to depart voluntarily at his own expense if his petition were rejected.

The District Director denied the new application without a hearing. He stated that the first hearing had been held under the regulation, rather than the statute, and that the regulation had always read as the statute was later amended to read. He reiterated his position that appellant was not entitled to section 1252(b) procedures, and relied upon the earlier district court decision approving this view. He rejected appellant's request for voluntary departure on the ground that under section 1282(b) appellant "is to be placed in the custody of the steamship company which brought him to the United States and his deportation from the United States is to be effected by the steamship company." The District Director therefore denied appellant's petition in its entirety and ordered appellant to appear for removal three days later.

Appellant filed a complaint in the district court, challenging the District Director's decision and praying for a restraining order on various grounds which, so far as necessary to our decision, are stated below. Appellees answered. The district court entered judgment on the pleadings, denying appellant any relief. This appeal followed.

Both sides support the jurisdiction of the district court to enter the judgment appealed from.

Since the order of the District Director was not entered in a section 1252(b) proceeding, it is not within the purview of 8 U.S.C. § 1105a(a) (1964), which vests exclusive jurisdiction to review section 1252(b) orders in the Courts of Appeals. *Yamada* v. *Immigration & Naturalization Service*, 384 F.2d 214 (9th Cir. 1967).

Since the order was not one made under the provisions of 8 U.S.C. § 1226 (1964), appellant's remedy in the district court was not limited to habeas corpus by 8 U.S.C. § 1105a(b) (1964). We see no reason why the order could not be reviewed by the district court under the Administrative Procedure Act, 5 U.S.C. § 1009 (1964)—as that court held in entertaining appellant's first complaint. 243 F.Supp. at 115-16. But even if habeas corpus were the

exclusive remedy, it would be available to appellant, for he was, and now is, subject to a parole order of the District Director. *Jones* v. *Cunningham*, 371 U.S. 236, 243 (1963).

The district court therefore had jurisdiction to review the District Director's order.

Appellees urge us to hold that the question of whether appellant was entitled to the deportation procedures of section 1252(b) was decided against him by the district court in appellant's first action, and since the judgment in that action has become final the issue is not open to re-examination.

Appellant points out that the ship upon which he arrived and on which he was to depart was still in port when the District Director entered the order reviewed in the first action, but that it had departed long before the District Director entered the order attacked in the second action.[1] He contends that this factual difference raises a wholly different legal issue, rendering the second order erroneous, even assuming the correctness of the first.[2]

---

[1] The record does not disclose the vessel's exact sailing date. However, the District Director's second order was entered more than 18 months after the entry of his first order.

[2] The issue which appellant raises here, and the only issue with which we deal, is one of statutory construction. We are not concerned with the constitutionality of the summary deportation proceedings authorized by § 1282(b).

It is suggested in Kordic v. Esperdy, 386 F.2d 232, 236-37 (2d Cir. 1967), quoting from Stellas v. Esperdy, 366 F.2d 266, 269 (2d Cir. 1966), *vacated* 388 U.S. 462 (1967), that "any Constitutional right to full-scale deportation proceedings" is "waived" by acceptance of a landing permit in view of the following provision imprinted on the permit form:

> By accepting this conditional permit to land the holder agrees to all the conditions incident to the issuance thereof, and to deportation from the United States in accordance with the provisions of section 252(b) [8 U.S.C. § 1282(b)] of the Immigration and Nationality Act.

The question before us is the meaning of the phrase "deportation from the United States in accordance with the provisions of section 252(b) of the Immigration and Nationality Act." Obviously appellant has not agreed to any procedures which § 252(b) does not authorize.

We agree. We conclude that subsection (b) of section 1282 authorized appellant's summary deportation aboard the vessel on which he arrived or, within a very limited time after that vessel's departure, aboard another vessel pursuant to arrangements made before appellant's vessel departed.[3] We further conclude that since section 1282 (b) did not authorize summary deportation of appellant in the circumstances existing when the District Director entered the order under review, appellant could be deported only in accordance with sections 1251 and 1252 of the Act.

We turn first to the premise that the general provisions regarding deportation found in sections 1251 and 1252 of the Act apply to alien crewmen who have been permitted to land for shore leave, except as section 1282(b) precludes their application.

Section 1251(a) states that "any alien in the United States (including an alien crewman)" shall be deported if he falls within one of the categories described in that section. Section 1252(b) outlines the procedures "to determine the deportability of any alien." Thus the language of sections 1251 and 1252 is broad enough to include alien crewmen who have landed under section 1282(a) permits if such crewmen are "in the United States," as that phrase is used in section 1251, and are not merely "on the threshold of initial entry," as are persons paroled into the United States under section 1182(d)(5). *Shaughnessy* v. *Mezei*, 345 U.S. 206, 212 (1953). See also *Leng May Ma* v. *Barber*, 357 U.S. 185 (1958); *Lam Hai Cheung* v. *Esperdy*, 345 F.2d 989, 990 (2d Cir. 1965).

Congress apparently thought alien crewmen landing under section 1282(a) permits would be within the reach of the general deportation sections; otherwise the provision in section 1282(b) expressly excluding section 1252 coverage would have been wholly unnecessary.

---

[3] We therefore do not agree with the holding of the Court of Appeals for the Second Circuit in Kordic v. Esperdy, 386 F.2d 232, 237-38 (1967), that if an alien crewman's permit is revoked before the vessel on which he arrived and on which he was to leave departs he is deportable under § 1282(b) at any time thereafter, apparently without regard to the departure of his vessel or how long a period may have elapsed.

The same conclusion as to the congressional understanding is suggested by other elements in the structure of section 1282.

To obtain a landing permit under section 1282(a) an alien crewman "must establish to the satisfaction of the immigrant inspector that he is eligible to enter the United States . . . ." Besterman, Commentary on the Immigration and Nationality Act, 8 U.S.C.A. 1, 39 (1953). He "must have in his possession a valid passport and a visa issued by an American consul" and "must be eligible to enter the United States under the general eligibility rules." *Ibid.*; 8 C.F.R. § 252.1(c).[4]

Section 1282(a) contemplates issuance of landing permits both to crewmen who intend to depart on the vessel on which they arrived and to crewmen who intend to depart on a different vessel.[5] However, the summary procedures of section 1282(b) apply only to those crewmen who were to depart on the vessel on which they arrived. Crewmen who were to depart on a different vessel are to be deported in accordance with sections 1251 and 1252 (*Kordic* v. *Esperdy*, 386 F.2d 232, 237 n. 5 (2d Cir. 1967)); and thus, admittedly, are treated as "in the United States." There is nothing in the language of section 1282 suggesting that some crewmen who land under section 1282(a) conditional landing permits are "in the United States" but that others are not.

Historically, seamen on shore leave have been treated as having "entered" this country for purposes of the immigration laws (see, *e.g.*, *Claussen* v. *Day*, 279 U.S. 398, 401 (1929); *Stapt* v. *Corsi*, 287 U.S. 129 (1932)), and as being subject to deportation in accordance with the general provisions of those laws as persons unlawfully in the United States. *Colovis* v. *Watkins*, 170 F.2d 998, 1000 n. 1 (2d Cir. 1948); Senate Report 1515, 81st Cong., 2d

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[4] Stowaways are among the classes of aliens "excluded from admission into the United States," but alien crewmen are not. 8 U.S.C. § 1182(a)(18) (1964).

[5] Landing permits issued to the former are referred to as "D-1" permits and to the latter as "D-2" permits, from the designation of the applicable subparagraphs of the regulations. See 8 C.F.R. § 252.1(d)(1) and (d)(2).

Sess. 547 (1950). The authorization of conditional landing permits by section 1282(a) did not change the status of crewmen on shore leave. Since the conditional landing permit was an administrative invention found in pre-1952 regulations, it was necessarily considered to be consistent with the pre-1952 law. House Report 1365, 82d Cong., 2d Sess. (1952), 2 U.S. Cong. & Admin. News 1722. The innovation in the 1952 Act was not the conditional landing permit, but the provision for summary revocation and deportation. 1 Gordon & Rosenfield, Immigration Law and Procedure § 6.3a (1967).

Finally, the premise that alien crewmen landed under section 1282(a) permits are deportable on grounds stated in section 1251 in accordance with section 1252 procedures, except only as section 1282(b) provides to the contrary, is supported by holdings, commentary, and practice applying sections 1251 and 1252 to such seamen whenever their cases, for one reason or another, do not fit into the very narrow limits within which summary proceedings are authorized by section 1282(b).[6]

We turn, then, to the question of the reach of the section 1282(b) exception to the general provisions of sections 1251 and 1252.

The section 1282(b) exception is very narrowly drawn. It does not apply to the deportation of crewmen who have "jumped ship" and entered the United States illegally, with no permit at all. As noted above, it does not apply to crewmen issued landing permits authorizing them to depart on vessels other than those on which they arrived. It does not apply to crewmen who have overstayed the

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[6] Matter of M, 5 I.N. 127 (1953); see also Kordic v. Esperdy, 386 F.2d 232, 237 n.5 (2d Cir. 1967); 1 Gordon & Rosenfield, Immigration Law & Procedure § 6.3a (1967). The practice referred to is reflected in a multitude of cases, *e.g.*, Foti v. Immigration & Naturalization Service, 375 U.S. 217 (1963); Cheng Kai Fu v. Immigration & Naturalization Service, 386 F.2d 750 (2d Cir. 1967); Sovich v. Esperdy, 319 F.2d 21 (2d Cir. 1963); Blagaic v. Flagg, 304 F.2d 623 (7th Cir. 1962); Milutin v. Bouchard, 299 F.2d 50 (3d Cir. 1962); vacated on other grounds 370 U.S. 292 (1962); Dunat v. Hurney, 297 F.2d 744 (3d Cir. 1962); Couto v. Shaughnessy, 218 F.2d 758 (2d Cir. 1955); Dolenz v. Shaughnessy, 200 F.2d 288 (2d Cir. 1952); Matter of P, 9 I.N. 368 (1961); Matter of A, 9 I.N. 356 (1961).

twenty-nine day leave period without revocation of their landing permits. It does not apply to crewmen who were to leave on the vessel on which they arrived if their vessels have departed before their landing permits are revoked. In all of these situations crewmen may be deported only in accordance with section 1252(b) procedures.[7]

The purpose and language of section 1282(b) and the content of closely related sections of the Act, particularly when considered in light of the deliberate narrowness of the section 1282(b) exception, strongly suggest that summary deportation is authorized only if it can be accomplished by returning the crewman to his own vessel, with an exception for practical exigencies which goes no farther than to permit prompt deportation on another vessel arranged before the departure of the vessel on which the alien was a crewman.

Congress' purpose was to secure prompt removal of alien crewmen in order to close a "loophole" through which large numbers of alien crewmen had in the past "become lost in the general populace of the country," establishing relationships and statuses which made subsequent deportation difficult.[8] The means adopted was that of summarily revoking alien crewmen's landing permits and returning the alien crewmen to the vessels which brought them. Summary revocation and removal of alien crewmen without hearing or appeal was thought to be necessary if the alien crewmen were to be returned to their vessels without unduly delaying international commerce.[9]

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[7] See note 6.

[8] Senate Report 1515, 80th Cong., 2d Sess., 550-51 (1950). Joint Hearings before the Subcommittees of the Committees of the Judiciary on S. 716, H.R. 2379, and H.R. 2816, 82d Cong., 1st Sess. 156-60 (1951).

[9] Alfred U. Krebs, Counsel of the National Federation of American Shipping, Inc., testifying at Joint Hearings before the Subcommittees of the Committees on the Judiciary on S. 716, H.R. 2379, and H.R. 2816, 81st [*sic:* should read "82d"] Cong., 1st Sess., objected to § 1282(b) on the ground that the transportation company would be charged with the expense of deporting an alien crewman on the basis of an immigration officer's summary determination that the crewmen [*sic*] did not intend to depart with his vessel. Mr. Krebs stated, "It seems to us that there should be some pro-

No other possible justification for this "extraordinary procedure" [10] was suggested.

As we have seen, section 1282(b) distinguishes between alien crewmen who were to depart on the vessel on which they arrived and those who were to depart on a vessel other than that on which they arrived, and provides for summary deportation only of the former. The only conceivable explanation for this distinction is that the summary procedure was intended to be used to put the alien crewmen back on their ship and to require their ship to remove them, or, at least, to arrange for their prompt removal at the ship's expense.[11]

Subsection (b) of section 1282 makes this explicit by providing that when the crewman's landing permit has been summarily revoked, the immigration officer may "require the master or commanding officer of the vessel or aircraft on which the crewman arrived to receive and de-

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cedure set up for a hearing, or something in that connection." *Id.* at 156; and further, "we do find fault with the fact that it is in the mind of the immigration officer as to what the intentions of that crewman are, without any hearing or any procedure being set up, or any evidence being introduced, to show that this man does not intend to return. That is the thing that we object to about it." *Ibid.*

In the course of the subsequent colloquy between Mr. Krebs and Richard Arens, Staff Director of the Senate Subcommittee, the following appears:

> Mr. ARENS. If they had a hearing, Mr. Krebs, the probabilities are that the ship would have departed before the hearings were over, would it not?
>
> Mr. KREBS. That is possible.
>
> Mr. ARENS. And it is also possible that the 29 days itself would have expired before the hearing is concluded.
>
> Mr. KREBS. That is right. That is certainly possible.
>
> Mr. ARENS. So the net result of requiring the hearing before revocation of the permit to have a seaman land would be that you would not accomplish anything from the standpoint of getting your seaman out of the country.

Id. at 157. See also, House Report 1365, 82d Cong., 2d Sess. (1952), 2 U.S. Cong. & Admin. News 1722.

[10] 1 Gordon & Rosenfield, Immigration Law & Procedure § 6.3a at 6-28 (1967).

[11] Thus the regulations limit issuance of permits to crewmen intending to depart on a vessel other than that on which they arrived

tain him on board such vessel or aircraft, if practicable,[12] and such crewman shall be deported from the United States at the expense of the transportation line which brought him to the United States."

Section 1284 further implements the legislative scheme in which summary deportation is linked directly to presence of the crewman's vessel. Subsection (a) of section 1284 imposes a fine upon the owner, agent, consignee, charteree, master, or commanding officer of a vessel or aircraft who fails to deport an alien crewman if required to do so under section 1282, and provides that "No such vessel or aircraft shall be granted clearance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid," unless a bond is posted for payment. Subsection (b) of section 1284 provides that "proof that an alien crewman did not appear upon the outgoing manifest of the vessel or aircraft on which he arrived . . . shall be prima facie evidence of a failure to . . . deport such alien crewman."

Subsection (c) of section 1284 is quoted in full in the

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to situations in which "the immigration officer has consented to the pay off or discharge of the crewman from the vessel on which he arrived" (8 C.F.R. § 252.1(d)(2)) when, presumably, there is no longer any relationship between the crewman and the vessel on which he arrived which would justify imposing the duty or expense of his removal upon the vessel.

[12] Later provisions of the statute indicate that the qualification "if practicable" refers to a condition affecting a particular crewman or vessel which renders immediate detention aboard unfeasible, such as illness of the crewman or movement of the vessel to another port of the United States, but not to the departure of the vessel for a foreign port.

The implementing regulations contemplate that a permittee may arrange with the master of his vessel to rejoin his ship at another port in the United States at which it will call before departing for a foreign port. 8 C.F.R. § 252.1. The regulation governing summary deportation of those permittees therefore provides that such a crewman may be taken into custody and "transferred to the vessel upon which he arrived in the United States, if such vessel is in any port of the United States and has not been in a foreign port or place since the crewman was issued his condition [sic] landing permit." 8 C.F.R. § 252.2.

margin.[12] Although the first sentence recognizes that removal of a crewman following summary revocation of his landing permit may be accomplished on a vessel other than the one upon which the crewman arrived, the only alternative authorized is deportation "on another vessel or aircraft of the same transportation line," if this be practicable. The Attorney General is not given general authority to deport the alien crewman by any available means. More significantly, the section contemplates that the alternative arrangement shall be made while the vessel upon which the crewman arrived is still in port—his ship is not to be cleared for departure until the expenses incident to

[12] Subsection (c) of § 1284 provides:

> If the Attorney General finds that deportation of an alien crewman under this section on the vessel or aircraft on which he arrived is impracticable or impossible, or would cause undue hardship to such alien crewman, he may cause the alien crewman to be deported from the port of arrival or any other port on another vessel or aircraft of the same transportation line, unless the Attorney General finds this to be impracticable. All expenses incurred in connection with such deportation, including expenses incurred in transferring an alien crewman from one place in the United States to another under such conditions and safeguards as the Attorney General shall impose, shall be paid by the owner or owners of the vessel or aircraft on which the alien arrived in the United States. The vessel or aircraft on which the alien arrived shall not be granted clearance until such expenses have been paid or their payment guaranteed to the satisfaction of the Attorney General. An alien crewman who is transferred within the United States in accordance with this subsection shall not be regarded as having been landed in the United States.

The concluding sentence of § 1284(c) does not apply to an alien crewman admitted on a landing permit. Its presence is explained by the fact that, as stated in § 1284(a), this section applies not only to alien crewmen permitted to land for shore leave but also to those who are being detained prior to entry pending examination by an immigration officer, to alien crewmen who have been inspected but have not been granted a landing permit, to alien crewmen who have been paroled into the United States under 8 U.S.C. § 1182(a)(5) which "shall not be regarded as an admission of the alien," and to alien crewmen who are hospitalized on arrival as provided in § 1283 for treatment of one of the diseases listed in § 1285 "including an alien crewman ineligible for a conditional permit under section 1282(a)."

the alternative arrangement have been paid or guaranteed.[14]

The accepted construction of section 1282(b), as we have noted, is that its provisions may not be invoked if the attempt to deport a crewman is begun after his ship has sailed, for as the court said in *Kordic* v. *Esperdy*, 386 F.2d 232, 237 (2d Cir. 1967), "the justification for quick resolution of the problem departs with the vessel." See also *Martinez-Angosto* v. *Mason*, 344 F.2d 673, 685 (2d Cir. 1965); *Matter of M*, 5 I.&N. 127 (1953).

This much being conceded, it is difficult to see why the result should be different when section 1282(b) proceedings are begun, but not completed, before the vessel departs. Whenever the statutory scheme for utilizing the availability of an alien crewman's vessel to effect his speedy deportation is frustrated, the justification for quick resolution of the crewman's status is gone. What reason remains for not then affording the crewman the benefits of section 1252?

Although the time and effort which have already been invested in the aborted administrative process would be lost, summary deportation is not authorized simply as a device for saving administrative time, and, in any event, the time and effort invested in summary proceedings is, by definition, minimal. The careful provisions of section 1252 and the narrow scope of the section 1282(b) exception reflect a legislative judgment that, in the absence of exigent circumstances and a potential for substantial benefits from summary action, decisions affecting deportation should be based upon deliberate and thorough consideration in view of the nature of the issue presented and the importance of the interests at stake.

The purpose of section 1282(b) is palliative, not punitive. Its object is to provide a specific remedy for a particular problem, not to deprive alien crewmen of rights available to others simply to punish them. If an alien crewman is denied the benefits of section 1252 though the exigency justifying summary deportation has passed,

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[14] The implementing regulation permits deportation other than on the vessel on which the crewman arrived only upon the written request of the master of the crewman's vessel. 8 C.F.R. § 252.2.

great loss is inflicted on the crewman without purpose. This is so even though he concedes his deportability, as do the overwhelming majority of persons involved in section 1252 proceedings.[15]

Although the benefits of suspension of deportation by 8 U.S.C. § 1254(f) (1964) and adjustment of status by 8 U.S.C. § 1255(a) (1964) in section 1252 proceedings are denied alien crewmen, they may be permitted to depart voluntarily to a country of their choice under section 1252 (b), and, perhaps, also under section 1254(d). *Matter of Vara-Rodriguez*, 10 I.&N. 113 (1962).

Moreover, if an alien crewman is finally ordered deported in a section 1252 proceeding, "his deportation will in the first instance be directed pursuant to section 243 (a) of the Act [8 U.S.C. § 1253(a)] to the country designated by him." 8 C.F.R. § 242.17(c). If that country will not accept him, and he is to be deported to another country selected in accordance with section 1253(a), he may apply for temporary withholding of deportation to the latter country under section 1253(h) on the ground that in that country he would be subject to persecution on account of race, religion, or political opinion.[16] His claim is considered by a special inquiry officer—an official having special competence and relatively independent status—in a proceeding carefully designed to guarantee a hearing that is both full and fair, followed by a decision subject to administrative as well as judicial review.[17]

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[15] Foti v. Immigration & Naturalization Service, 375 U.S. 217, 227 n.13 (1963).

[16] Section 1253(h) applies to "any alien within the United States." We have stated our reasons for concluding that alien crewmen who have landed under § 1282(b) permits are within this description. See text at notes 4-6.

Subsections (c) and (d) of § 1253 contain express references to alien crewmen granted "conditional permit[s] to land temporarily" under § 1282(a).

[17] Nothing we have said is intended to suggest that § 1252(b) proceedings are required when an alien crewman makes a claim of possible persecution in circumstances where § 1282(b) does apply. See Kordic v. Esperdy, 386 F.2d 232, 238 (2d Cir. 1967); Glavic v. Beechie, 340 F.2d 91 (5th Cir. 1964), affirming 225 F.Supp. 24 (S.D.Texas 1963). *Cf.* Dolenz v. Shaughnessy, 200 F.2d 288, 288-89 (2d Cir. 1952); 1 Gordon & Rosenfield, Immigration Law & Procedure § 5.166 [*sic:* should read "§ 5.16b"] at 5-127 (1967).

For these reasons we hold that the order of the District Director entered after the departure of appellant's vessel was not authorized by section 1282(b), and that appellant may be deported only in accordance with sections 1251 and 1252 of the Act.

Since the standard applied in any proceedings that may hereafter be had upon an application by appellant under section 1253(h) of the Act will necessarily be that provided by the statute as it now reads, we need not consider whether or not the District Director applied that standard in past proceedings.

The government expresses concern that the interpretation we place upon section 1282(b), plus the availability of judicial review of summary decisions revoking landing permits and ordering the removal of crewmen, will render section 1282(b) useless for any purpose even when properly invoked while a crewman's vessel is still in port. But as the district court demonstrated in this case, no great delay need be involved in the disposition of applications for relief,[18] and stays are not automatic either in the trial court or here. If the challenge to a section 1282(b) order is not substantial, enforcement of the order need not be substantially delayed. If the order appears to violate constitutional or statutory limitations, delay is obviously justified.

Reversed and remanded.

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[18] Appellant's complaint was filed on the day the District Director's order was entered. The district court issued an order to show cause on the same day, returnable the following morning. The hearing was held as noticed, and an order denying relief was entered in the course of the same day.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 21,272

VELJKO STANISIC, APPELLANT

vs.

UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, ETC., APPELLEES

APPEAL from the United States District Court for the Western District of Washington, Northern Division [*].

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington, Northern Division [*], and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and that this cause be and hereby is remanded to the said District Court.

Filed and entered April 17, 1968.

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* So in original. Should read "District of Oregon".

SUPREME COURT OF THE UNITED STATES

No. 297, October Term, 1968

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

VELJKO STANISIC

ORDER ALLOWING CERTIORARI—Filed October 21, 1968.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

No. 297, October Term, 1968

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

VELJKO STANISIC

ON CONSIDERATION of the motion of the respondent for leave to proceed in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 21, 1968

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